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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ELIZA L. et al., Persons Coming  
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

H.L.,

Defendant and Appellant.

D056014

(Super. Ct. No. SJ12102A-B)

APPEAL from orders of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

H.L. appeals juvenile court orders terminating his parental rights to his minor daughters, Eliza L. and Hailey L. (together the minors), under Welfare and Institutions Code<sup>1</sup> section 366.26. H.L. challenges the sufficiency of the evidence to support the

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

court's finding the beneficial parent-child relationship exception to adoption did not apply to preclude terminating his parental rights. We affirm the orders.

### FACTUAL AND PROCEDURAL BACKGROUND

In March 2007 four-year-old Eliza and three-year-old Hailey became dependents of the Orange County juvenile court under section 300, subdivisions (b) and (g) because their parents, H.L. and Denise L.,<sup>2</sup> had a substance abuse problem and had been arrested and incarcerated for selling drugs from their home. When the parents were arrested, police found methamphetamine in areas of the home accessible to the minors. Denise admitted she and H.L. were selling and using drugs in the home. H.L. had a criminal record, including drug-related crimes, dating back to 1998. The court detained the minors with the maternal grandparents.

At the time of the six-month review hearing, Denise had been released from jail and was actively participating in reunification services. H.L. remained incarcerated and was participating in his service plan as much as he could. He maintained contact with the minors through letters and telephone calls, and was arranging to have them visit him in prison. The court continued services for six more months.

By the 12-month date, H.L. was still incarcerated and continued to participate in services to the extent possible, including writing to and telephoning the minors. H.L. discouraged the social worker from bringing the minors to the prison facility because of

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<sup>2</sup> Denise is not a party to the appeal.

the distance and "stringent visitation guidelines." The court continued the matter to the 18-month date.

According to reports dated July 14 and October 7, 2008, H.L. was transferred to a federal facility, and would not be released until October 2009. The minors were placed with Denise, who had moved to San Diego County, for a 60-day trial visit. H.L. was participating in drug treatment and was eager to maintain a relationship with the minors. The minors took a 14-hour trip to visit H.L. The visit was positive, and the minors said they enjoyed the visit and that they missed H.L.

In November 2008 the Orange County juvenile court placed the minors with Denise and transferred the case to San Diego County. The social worker for the San Diego County Health and Human Services Agency (Agency) reported H.L. remained in federal custody, continued to work on his case plan, visited the minors monthly and spoke to them by telephone once a week.

In January 2009 Agency filed petitions in the juvenile court under section 387, requesting the minors' removal from Denise's custody because Denise and the minors were living with a registered sex offender. The court again detained the minors in out-of-home care.

Denise declined further services and said she wanted the minors to be adopted by the maternal grandfather. H.L. did not want his parental rights terminated, but approved of the maternal grandfather as the minors' guardian. The minors were again living with the maternal grandparents in Orange County, and were doing well in that placement. The

court terminated services for the parents and set a hearing under section 366.26 to select and implement a permanent plan for the minors.

The social worker recommended adoption as the minors' permanent plans. The minors were generally adoptable based on their ages, gender, good health and normal development. They had spent much of their lives in the home of the maternal grandparents, who were committed to adopting them and had been approved for adoptive placement. In addition, there were 53 approved adoptive homes for children like these minors.

In the social worker's opinion, the parent-child relationship between H.L. and the minors was not strong compared to the benefits of adoption for them. H.L. had been paroled to a halfway house, and had occasional contact with the minors through telephone calls and supervised visits at the maternal grandparents' home. The maternal grandfather reported the minors had no negative reaction when visits with H.L. ended, and they saw him more as an uncle than a parent. H.L. had not been involved in the minors' lives on a consistent basis. Instead, the minors looked to the maternal grandparents to meet their physical and emotional needs. The social worker believed the minors' need for permanency outweighed any detriment they would experience if parental rights were terminated. If the maternal grandparents adopted the minors, they intended to allow continued contact with the parents.

At a contested selection and implementation hearing, social worker Melissa Rodriguez testified she observed one visit between H.L. and the minors. Their interaction was appropriate and loving, and the minors called H.L. "dad." They played

games during the visit, and the minors separated easily from him when the visit ended. In Rodriguez's opinion, H.L. did not have a parent-child relationship with the minors. He had not been a part of the minors' lives for several years, and the minors did not look to him to get their needs met.

Denise testified she wanted the maternal grandparents to adopt the minors because the minors were bonded to them and needed a stable home. She believed the maternal grandparents would allow the minors to continue visiting her and H.L.

H.L. testified he took care of the minors before he was incarcerated. While in prison, he communicated with the minors by letters and telephone calls, and also had some in-person visits. H.L. read to them and played with them during visits. They called him "dad." He approved of the maternal grandparents as caregivers and wanted a stable home for the minors, but was afraid the maternal grandfather would not allow him to visit if parental rights were terminated.

After considering the evidence and hearing argument of counsel, the court found the minors were adoptable, and none of the exceptions to adoption applied. The court terminated parental rights and referred the minors for adoptive placement.

## DISCUSSION

H.L. challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating his parental rights. H.L. asserts he had a strong bond with the minors, which he maintained through regular contact, and the parent-child relationship was worthy of protection.

A

"Adoption, where possible, is the permanent plan preferred by the Legislature." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds a compelling reason for determining that termination of parental rights would be detrimental to the child under one or more of the enumerated statutory exceptions. (§ 366.26, subd. (c)(1)(A) & (B)(i)-(vi); *In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.) "The parent has the burden of establishing the existence of any circumstance that constitutes an exception to termination of parental rights." (*In re T.S.* (2009) 175 Cal.App.4th 1031, 1039.) Because a selection and implementation hearing occurs "after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the adoption preference if terminating parental rights would be detrimental to the child because "[t]he parents . . . have maintained regular visitation and contact with the [child] and the [child] would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement

against the security and sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at pp. 574-575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811; *In re Jason J.* (2009) 175 Cal.App.4th 922, 936-937.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant visits. (*In re Jason J.*, *supra*, 175 Cal.App.4th at pp. 936-937; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The parent must show he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment from child to parent. (*In re Derek W.*, *supra*, at p. 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

We review the court's finding regarding the applicability of a statutory exception to adoption for substantial evidence. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

## B

H.L. was incarcerated throughout the dependency proceedings, but nevertheless maintained regular contact with the minors through letters, telephone calls and in-person visits. However, H.L. did not meet his burden of showing there was a beneficial parent-child relationship sufficient to apply the exception of section 366.26, subdivision (c)(1)(B)(i).

The minors knew H.L. was their father, loved him and enjoyed visiting him. During visits, H.L. played with the minors and read to them, but he did not act in the role of a parent by tending to their needs. Instead, the minors viewed H.L. more as a relative or extended family member. They separated easily from him after visits and there was no indication they asked for him between visits or were in any way negatively impacted by his absence from their daily lives. In this regard, H.L. did not show the minors had a "significant, positive, emotional attachment" to him such that terminating the parent-child relationship would result in great harm to them. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; *In re Jason J.*, *supra*, 175 Cal.App.4th at p. 938.) "A biological parent who has failed to reunify with an adoptable child may not derail adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.)

Further, H.L. did not show that maintaining a relationship with the minors outweighed the benefits of adoption for them. The minors had been dependents for more than two years and had experienced much turmoil and instability. They were now thriving in the care of the maternal grandparents, who provided them with a stable and



loving home and were committed to adopting them. The court was entitled to accept the social worker's opinion that H.L.'s relationship with the minors did not outweigh the benefits of lifelong stability and security that adoption by the maternal grandparents would provide. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 53 [trial court entitled to find social worker credible and give great weight to her assessments and testimony].) The court was required to, and did, weigh the strength and quality of the parent-child relationship, and the detriment involved in terminating it, against the potential benefit of an adoptive home for the minors. We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D., supra*, at p. 53.)

## C

H.L.'s reliance on *In re S.B.* (2008) 164 Cal.App.4th 289, 298-300, is misplaced. He cites that case for the proposition the beneficial parent-child relationship exception may apply even in the absence of "day-to-day" contact or a primary relationship. However, the court here did not rely on the absence of either day-to-day contact or a primary relationship between H.L. and the minors to support its findings. The evidence before the court showed H.L. did not occupy a parental role in the minors' lives and was not attentive to the minors' " 'needs for physical care, nourishment, comfort, affection and stimulation,' " which typically arise from " 'day-to-day interaction, companionship and shared experiences.' " (*Id.*, quoting *In re Autumn H., supra*, 27 Cal.App.4th at p. 575.) Unlike the facts in *S.B.*, there was no evidence here, direct or by inference, that the

minors would be greatly harmed by severance of the relationship. As the juvenile court noted, the benefits of adoption for these minors far outweighed any detriment they would experience if parental rights were terminated.<sup>3</sup> Moreover, the decision in *In re S.B.* does not "stand for the proposition that a termination order is subject to reversal whenever there is 'some measure of benefit' in continued contact between parent and child." (*In re Jason J.*, *supra*, 175 Cal.App.4th at p. 937.)

#### D

H.L. contends the court erred by failing to consider the minors' wishes with respect to adoption. (§ 366.26, subd. (h).) To the extent H.L. is challenging the adequacy of the assessment report which contains the minors' statements concerning placement and adoption, he has forfeited that argument by not raising it in the juvenile court. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 200, fn. 12; *In re S.B.* (2004) 32 Cal.4th 1287, 1293 [parent's failure to object or raise certain issues in juvenile court generally prevents the parent from claiming error on appeal].) If H.L. believed the court had no meaningful information as to the minors' wishes regarding their adoption, he should have raised this issue in the juvenile court. By his silence and acquiescence, H.L.

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<sup>3</sup> Contrary to H.L.'s argument, the court was entitled to consider the fact that the maternal grandparents provided consistent daily care for the minors when it evaluated their need for stability and permanence. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854 [when biological parent does not fulfill parental role, child should be given every opportunity to bond with an individual who will assume the role of parent].) Further, the court expressly declined to base its decision on the speculative prospect that the maternal grandparents would not allow continued contact between H.L. and the minors if parental rights were terminated.

has forfeited his right to claim error on appeal. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.)

In any event, the assessment report shows the social worker spoke to the minors, then ages six and five, about their placement and adoption. The minors reported they loved their grandparents, were happy in their placement and wanted to remain there. Their behavior and demeanor reflected their happiness. "[I]n considering the child's expression of preferences, it is not required that the child specifically understand the proceeding is in the nature of a termination of parental rights." (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1593; accord *In re Amanda D.* (1997) 55 Cal.App.4th 813, 820.) Instead, where practicable and consistent with the child's best interests, the social worker should attempt to obtain some evidence of the child's feelings from which the court can then infer the child's wishes. (*In re Leo M.*, *supra*, at p. 1594.) Here, the social worker provided that information, and the court was able to consider the minors' wishes to the extent those wishes were ascertainable. (*In re Joshua G.*, *supra*, 129 Cal.App.4th at p. 201.)

Despite H.L.'s preference for guardianship for the minors, the Legislature has decreed that a permanent plan other than adoption "is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most permanent and secure alternative that can be afforded them." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419; see also *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 251 [unlike adoption, guardianship is "not irrevocable and thus falls short of the

secure and permanent placement intended by the Legislature"].) The minors, whose needs could not be met by H.L., deserve to have their custody status promptly resolved and their placement made permanent and secure. Substantial evidence supports the court's finding the exception of section 366.26, subdivision (c)(1)(B)(i) did not apply to preclude terminating H.L.'s parental rights.

#### DISPOSITION

The orders are affirmed.

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BENKE, J.

WE CONCUR:

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McCONNELL, P.J.

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McDONALD, J.